IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11814 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEEPAK MAHENDRABHAI PATEL
Versus
THE STATE OF GUJARAT AND OTHERS

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Appearance :
MR PARTHIV B SHAH for Petitioner.
MS MD MEHTA, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 30/07/2007

ORAL JUDGMENT

1. While admitting this petition on 8-5-2007, this Court (Coram:Honourable Mr.Justice A.H.Mehta) had permitted the petitioner to deposit the amount of deficit stamp duty without prejudice to the rights and contentions of the petitioner and, on condition of such

deposit, directed the respondent to hand over the sale deed to the petitioner and that order is stated to have been implemented insofar as the petitioner is stated to have deposited Rs.2,92,259/- and the document in question is stated to have been given to him.

2. However, the petitioner has challenged the legality and validity of order dated 16-4-2007 whereby the market value of the property has been assessed and deficit stamp duty is determined at Rs.2,41,349/- on which the demand of Rs.51,000/- by way of penalty is also made. It was vehemently argued by learned counsel, Mr.Parthiv B. Shah that even statutory notice dated 9-3-2007 issued for the purpose of making the order under Section 33 stated the deficit stamp duty to be to the tune of Rs.96,349/-; but due to adverse order made and strictures passed by this Court in previous petition of the petitioner, i.e. Special Civil Application No.2153 of 2007, the Authority had vindictively passed the impugned order with a view to mulct additional amount by way of stamp duty. It was also submitted that the contentions raised by the petitioner were not duly considered by the Authority while making the impugned order.

3. Learned AGP, appearing for the respondents, submitted that the petitioner had alternative remedy of approaching the Chief Controlling Revenue Authority with an application under Section 53 of the Act and, if such application were made, in view of the fact that, by now, entire amount under the impugned order stands deposited with the Government, the Authority may decide it in accordance with law. Therefore, by consent and joint request, without entering into the merits of contentions of the learned counsel, the petition is partly allowed with the direction that the petitioner shall make an application under Section 53 of the Act to the Chief Controlling Revenue Authority and that Authority shall consider the case on merits and in accordance with law,

after affording to the petitioner an opportunity of being heard. It is clearly stated and understood that the application shall not be rejected on the ground of delay and the aforesaid process shall be carried out as expeditiously as practicable and if any amount is required to be refunded to the petitioner out of deposit already made, such amount shall be refunded to him in terms of order of the Authority within a period of 30 days from the date of such order. Rule is made absolute accordingly with no order as to costs.

(D.H.Waghela, J.)

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